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1927

(1927 to 1938)
(Superseding Mason's 1931, 1934, and 1936 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, and 1937 General Sessions, and the 1933-34, 1935-36, 1936, and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General; construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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CHAPTER 84

Actions by or against Personal Representatives and Heirs

9656. What causes of action survive.

1. Held to survive.

Rights under Wisconsin Statutes 1927, §287.01 may be enforced in Minnesota. *Chubbuck v. H.*, 182M225, 234NW314. See Dun. Dig. 14, 1530.

A right of action accruing to a party under a foreign statute will, as a matter of comity, be enforced in the courts of this state when jurisdiction can be had and justice done between the parties, if such statute be not contrary to the public policy of this state. *Chubbuck v. H.*, 182M225, 234NW314. See Dun. Dig. 14, 1530.

Action under Wisconsin Survival Statute, *Chubbuck v. M.*, 182M225, 234NW868.

A husband's cause of action for medical expenses and nursing incurred in attempting to cure his wife of the injuries negligently inflicted survives the death of the wife and the death of the wrongdoer. *Fowle v. F.*, 184M82, 237NW846. See Dun. Dig. 14.

2. Held not to survive.

Rights of parent to support under deed to child are personal and do not survive. *Gamble v. M.*, 187M640, 246NW368; *Malicki v. M.*, 189M121, 248NW723. See Dun. Dig. 2677.

3. Cause of action arising in another state.

Jurisdiction of estate of deceased tort-feasor may be acquired by service on personal representative as in case of surviving liability for torts committed here. *Kertson v. J.*, 185M591, 242NW329. See Dun. Dig. 3669.

9657. Action for death by wrongful act.—When death is caused by the wrongful act or omission of any person or corporation, the personal representative of the decedent may maintain an action therefor if he might have maintained an action, had he lived, for an injury caused by the same act or omission. The action may be commenced within two years after the act or omission. The damages therein cannot exceed \$10,000.00, and shall be for the exclusive benefit of the surviving spouse and next of kin, to be distributed to them in the same proportion as personal property of persons dying intestate; but funeral expenses, and any demand for the support of the decedent, duly allowed by the probate court, shall first be deducted and paid. Provided, that if an action for such injury shall have been commenced by such decedent, and not finally determined during his life, it may be continued by his personal representative for the benefit of the same persons and for recovery of the same damages as herein provided, and the court on motion may make an order, allowing such continuance, and directing pleadings to be made and issues framed conformably to the practice in action begun under this section. (R. L. '05, §4503; '11, c. 281, §1; G. S. '13, §8175; Apr. 29, 1935, c. 325, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall be in force from and after July 1, 1935.

2. Construction and application of statute.

The next of kin of a deceased person are persons interested in the outcome of an action to recover damages for causing the death of such deceased person. *Dougherty v. G.*, 184M436, 239NW153. See Dun. Dig. 10316.

Right to recover for death arising out of prenatal injury. 20MinnLawRev321.

3. Who may sue.

Though wife cannot maintain an action against her husband for a tort committed by him against person of wife, action by administrator of a child is not an action by wife against husband, and administrator may recover for death of child, though wife of defendant is sole beneficiary. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2608, 4288.

9. Defences.

That one defendant in action for death of guest in automobile was son of decedent and would benefit by recovery did not prevent recovery by personal representative for benefit of other beneficiaries, though reduction or apportionment because of negligence might be made. *Anderson v. A.*, 188M602, 248NW35. See Dun. Dig. 2616.

11. Limitation of actions.

Action for death against city must be commenced within one year from the occurrence of the loss or injury. 178M489, 227NW653.

14. Funeral expenses.

Representative of decedent's estate may recover from the wrongdoer the necessary funeral, hospital and medical expenses incurred in that behalf, provided same be reasonable, even if decedent left an adequate estate to pay such items. *Prescott v. S.*, 197M325, 267NW251. See Dun. Dig. 2612.

16. Damages.

\$2,564, held not excessive for death of child. 179M528, 229NW784.

Where the action is brought to recover for death by wrongful act, and the defense is contributory negligence by one or more of the next of kin or beneficiaries, the proper practice is to require the jury to assess the value of the loss of the life to all the next of kin and by special verdict determine who, if any, of the next of kin was guilty of contributory negligence. *Harrington v. A.*, 183M74, 235NW534. See Dun. Dig. 2616(7).

Measure of damages for wrongful death is money value to surviving spouse, if any, and next of kin, of continuance of decedent's life, measured by money value of what evidence shows decedent probably, or with reasonable certainty, would have contributed to them in money, property, or services, during remainder of his life. *Wiester v. K.*, 188M341, 247NW237. See Dun. Dig. 2617.

Verdict for \$7,500 was not excessive for death of woman 52 years of age leaving 10 children. *Anderson v. A.*, 188M602, 248NW35. See Dun. Dig. 7157.

Verdict for \$5,057.86 held not excessive for death of child. *Christensen v. P.*, 189M548, 250NW363. See Dun. Dig. 2597, 2617.

Verdict for \$7,500 reduced to \$6,750 for death of blacksmith, held not excessive. *Harris v. R.*, 189M599, 250NW577. See Dun. Dig. 2597.

Verdict for \$2,800 to a woman 58 years of age for death of a daughter earning \$95 a month who contributed substantial sum to her mother for family expenses, held not excessive. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 2617.

Verdict for \$7,500 for death of roofing contractor regularly contributing \$250 each month for maintaining household held not excessive. *Gross v. G.*, 194M23, 259NW557. See Dun. Dig. 2617.

A verdict for \$3,500 for death of seven year old child held not excessive. *Dickey v. H.*, 195M292, 262NW869. See Dun. Dig. 2617.

\$6,000 not excessive for death of 19-year-old daughter. *Hartel v. W.*, 196M465, 265NW282. See Dun. Dig. 2617.

In determining damages for death of a parent, consideration should be given to elements of loss which arise from deprivation of counsel, guidance and aid given to family. *Hoppe v. P.*, 196M538, 265NW338. See Dun. Dig. 2617.

Verdict for \$7,500 was not excessive for death of man 48 years old receiving public relief and leaving a wife and three children. *Id.*

Argument rejected that, because earnings of an able-bodied man have been much reduced by adverse general economic conditions, there must be a corresponding reduction of recovery by his dependents for his wrongful death. *Id.*

Verdicts for \$5,000 and \$2,500 respectively for death of elderly retired wealthy parents held excessive. *Prescott v. S.*, 197M325, 267NW251. See Dun. Dig. 2617, 2618(40).

In action by husband for wrongful death of wife, testimony as to second marriage and services of second wife is inadmissible and incompetent for any purpose whatsoever, especially where there are small children. *Lorberbaum v. C.*, 198M289, 269NW646. See Dun. Dig. 2619.

10a. Disposition of proceeds.

It cannot be said that children of parent not engaged in any gainful occupation, but who has means or income by which he contributes to them, will suffer no pecuniary loss by his death, though they will inherit his property. *Wiester v. K.*, 188M341, 247NW237. See Dun. Dig. 2617.

The recovery in an action for death by wrongful act is not for benefit of estate but for benefit of surviving spouse and next of kin. *Luck v. M.*, 191M503, 254NW609. See Dun. Dig. 2608, 2609.

Trial judge has plenary power in respect to distribution of damages for death and may not permit negligent father to share. *Id.* See Dun. Dig. 2610.

16b. Negligence of defendant or beneficiary.

Negligence of defendant held not the proximate cause of death. 171M486, 214NW763.

A husband's cause of action for medical expenses and nursing incurred in attempting to cure his wife of the injuries negligently inflicted survives the death of the wife and the death of the wrongdoer. *Fowle v. F.*, 184M82, 237NW846. See Dun. Dig. 14.

Where defendants did not ask for a reduction of death verdict or apportionment because of negligence of one beneficiary, no complaint could be made after a general verdict had been found favorable to administratrix. *Luck v. M.*, 191M503, 254NW609. See Dun. Dig. 2617.

Contributory negligence on part of mother of a child seven years old, which was killed by an automobile on a public highway, held question of fact for jury. *Dickey v. H.*, 195M292, 262NW869. See Dun. Dig. 2616.

In action for death of wife in a collision at highway intersection, contributory negligence of plaintiff held for jury. *Duncanson v. J.*, 195M347, 263NW92. See Dun. Dig. 2616.

Where in action for wrongful death, representative of estate of deceased would be sole beneficiary of any recovery, his contributory negligence bars recovery against defendant whose negligence caused death. *Jenson v. G.*, 195M556, 263NW624. See Dun. Dig. 2616(6).

Contributory negligence of deceased driver of car in nighttime in colliding with truck which had just pulled car out of ditch, blocking highway, held for jury. *Szyperski v. S.*, 198M154, 269NW401. See Dun. Dig. 2620.

16d. Presumptions.

Circumstantial evidence is sufficient to rebut presumption of due care on part of a deceased. *Faber v. H.*, 194M321, 260NW500. See Dun. Dig. 2616, 7032.

Driver killed in automobile collision is presumed to have exercised due care. *Vogel v. N.*, 196M509, 265NW350. See Dun. Dig. 2616(12).

It is incorrect to say that presumption of due care on part of decedent does not apply where there are eye witnesses to accident, and although the presumption is only an inference which law permits from appropriate facts, and since burden of proof upon issue of contributory negligence is upon defendants, the effect of the presumption or inference is governed by the state of the record at the time of submitting case to jury. *Anderson v. K.*, 196M578, 265NW821. See Dun. Dig. 2616, 3431, 7032.

A very strong presumption arises that deceased exercised due care to save himself from personal injury or death, and the question is always one of fact for jury unless undisputed evidence so conclusively and unmistakably rebuts presumption that honest and fair-minded men could not reasonably draw different conclusions therefrom. *Szyperski v. S.*, 198M154, 269NW401. See Dun. Dig. 2616.

Driver of car killed in accident is presumed to have exercised due care. *Laiti v. M.*, 199M167, 271NW481. See Dun. Dig. 2616.

Where driver of automobile was killed in a collision at a street intersection, with a street-car, presumption of due care of plaintiff's decedent is conclusively overcome by evidence which discloses that as a matter of law his negligence contributed to cause his death. *Geldert v. B.*, 274NW245. See Dun. Dig. 2616(12).

Elements of compensation for the death of a minor child. 16MinnLawRev409.

17. Evidence.

Evidence of financial condition of next of kin, held admissible. 179M528, 229NW784.

Person killed in an accident in the absence of eyewitnesses is presumed to have exercised due care. *Dougherty v. G.*, 184M436, 239NW153. See Dun. Dig. 2616(12).

It was not error to refuse to receive in evidence the general inventory filed in probate court in decedent's estate, as bearing upon the amount of damages resulting from his death. *Quinn v. Z.*, 184M583, 239NW902. See Dun. Dig. 2619.

In action to recover for death by wrongful act, directed verdict for defendant is proper, where evidence of causal connection between defendant's wrongful act and death is merely conjectural and speculative. *Peterson v. L.*, 186M101, 242NW549. See Dun. Dig. 2620.

In an action for wrongful death of wife, evidence of plaintiff's use of intoxicants, coupled with testimony indicating that wife, because thereof, was contemplating a separation and possible divorce, is relevant. *Peterson v. P.*, 186M583, 244NW68. See Dun. Dig. 2617.

Evidence held to sustain finding that death from lobar pneumonia 52 days after automobile accident was caused by it. *Anderson v. A.*, 188M602, 248NW35. See Dun. Dig. 2620, 6999.

In a death action wherein it appeared mother of decedent was sole beneficiary, mortality tables were admissible to show life expectancy of the mother, even if not admissible to show life expectancy of decedent, who was in ill health. *Albrecht v. P.*, 192M557, 257NW377. See Dun. Dig. 3353.

Mortality tables were admissible in evidence in action for death though evidence indicated that decedent had a weak heart. *Id.*

Evidence that plaintiff collected money on insurance carried on life of decedent and that she received at his death personal and real property from his estate, although not to be considered in arriving at amount of damages for his wrongful death, was admissible in refutation of testimony of plaintiff that she had no money with which to redeem certain real property of her husband sold under foreclosure. *Wright v. E.*, 193M509, 259NW75. See Dun. Dig. 2670b, 7193, 7202.

Presumption that a deceased person exercised due care for his own safety yields to credible undisputed testimony, and does not remain to create an issue of fact against such evidence. *Faber v. H.*, 194M321, 260NW500. See Dun. Dig. 2616, 7032.

In action against druggist evidence held to sustain finding that mineral oil contaminated with formalin or formaldehyde in deleterious quantity was sold to plaintiff for family use and that it caused death of his child. *Berry v. D.*, 195M366, 263NW115. See Dun. Dig. 2620.

In action for death of one caught upon door handle of moving automobile, evidence held not to support a verdict for plaintiff. *Markgraf v. M.*, 197M571, 267NW515. See Dun. Dig. 2620.

Evidence held not to support a finding that lobar pneumonia, from which plaintiff's intestate died, was caused by collision, occurring over five weeks prior to pneumonia, connection as proximate cause lacking as a matter of law. *Honer v. N.*, 198M55, 268NW852. See Dun. Dig. 2620.

In action by husband for wrongful death of wife, testimony as to second marriage and services of second wife is inadmissible and incompetent for any purpose whatsoever, especially where there are small children. *Lorberbaum v. C.*, 198M289, 269NW646. See Dun. Dig. 2619.

9661. Next of kin—Liability for debts.

Gilbertson v. M., (CCA8), 32F(2d)665.
Moneys and credits which were omitted in assessment of any year or years during life of deceased owner may be assessed and taxed for such year or years after estate has been distributed and personal representative discharged, and heirs and legatees are liable on property passing to them, and personal representative is liable personally if he had knowledge of such omission during administration of estate, and personal representative is further personally liable if moneys and credits tax is not paid for years covered by administration. *Op. Atty. Gen.* (614f), Jan. 7, 1935.

CHAPTER 85

Official and Other Bonds—Fines and Forfeitures

9677. Bonds, etc.

City officials should furnish new bond at beginning of each term of office, and a renewal certificate of bonding company is insufficient. *Op. Atty. Gen.*, Jan. 24, 1933.

Reelected township officials are required to furnish new bonds instead of renewal certificates. *Op. Atty. Gen.*, June 5, 1933.

A rider to a bond should be executed and properly acknowledged as provided by this section. *Op. Atty. Gen.* (645b-2), Aug. 20, 1934.

Provision in bond covering state employees that renewal thereof may be by certification or endorsement thereon is not renewed by instrument purporting to be a schedule continuous list. *Op. Atty. Gen.* (45g), Nov. 1, 1934.

Surety on official bond may not cancel bond during term of office without consent of all parties concerned, and consent may not lawfully be given by governing body until a satisfactory new bond is furnished. *Op. Atty. Gen.* (469b-5), Feb. 21, 1936.

Where one of joint sureties on bond of city treasurer dies, claim for full amount of defalcation should be filed against his estate, and city may not compromise claim or divide it as between sureties, estate of decedent being financially able to pay in full. *Op. Atty. Gen.* (59a-12), July 22, 1936.

Bonds should cover entire term of official, and annual continuation certificates should not be approved. *Op. Atty. Gen.* (59a-8), July 8, 1937.

9677-1. State may take fidelity insurance.—The

comptroller from time to time shall make surveys of each department or other agency of the state government to determine the employees in such department or agency whose fidelity should be assured by individual bond or fidelity insurance policy, and the amount of such bond or insurance necessary for each such employe, and shall submit a list thereof to the commission of administration and finance for its action thereon. The commission may approve in whole or in part and shall certify its action thereon to the directing head of each such department or agency, who shall require each of the employes so listed to give bond to the state in the amount indicated in such certificate. The commission in such certificate may direct that, in lieu of individual bonds so required, the directing head of any such department or agency